

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition for Declaratory Ruling	)	
of Grande Communications, Inc.	)	WC Docket No. 05-283
Regarding Self-Certification	)	
of IP-Originated VoIP Traffic	)	

**COMMENTS OF VERIZON<sup>1</sup>**

The Commission should deny Grande's petition for declaratory ruling. Grande pretends that the only issue the Commission must decide in its petition is whether LECs may rely on "customer's self-certification" that traffic originated in voice over Internet Protocol ("VoIP") format in deciding how to route and compensate other carriers for the traffic. In fact, however, Grande hopes to obtain by stealth a Commission ruling that VoIP traffic that uses the public switched telephone network ("PSTN") is exempt from access charges. Grande's petition is based on a series of false assumptions. Granting it would overturn the current access charge regime and replace it with a reciprocal compensation scheme that would grant preferential treatment to only one type of voice long distance call that uses the PSTN – namely, those that originate in VoIP on the other end of the call. Grande's Petition should be denied.

As an initial matter, it is important to be clear about the issue here. The issue is not whether VoIP services should be subject to economic regulation. They should not. Both VoIP services and the broadband services and facilities on which they ride are offered by multiple providers, and, as the Commission has recognized, are highly competitive. Accordingly, neither should be subject to traditional economic regulation.

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<sup>1</sup> The Verizon telephone companies ("Verizon") are the companies affiliated with Verizon Communications Inc. that are listed in Attachment A to these Comments.

The sole issue here is whether local exchange carriers should receive the same compensation they receive for all other voice long distance calls when a call happens to originate in VoIP format before it is converted to TDM and delivered over the public switched network in precisely the same manner as any other voice long distance call. Grande's request is at odds with the Commission's repeated emphasis that traffic that uses the public switched network in the same way should be subject to the same compensation. As the Commission explained in the IP-Enabled Services NPRM, "the cost of the PSTN should be borne equitably among those that use it in similar ways."<sup>2</sup> Accordingly, Grande's petition should be denied.

1. Switched Access Charges. Access charges were created by this Commission and state regulators to recover costs of the local telephone network that, before the breakup of the Bell System, had been recovered through voice long distance rates. The Commission in 1983 adopted rules for switched access charges to "provide for the recovery of the incumbent LECs' costs assigned to the interstate jurisdiction by the separations rules."<sup>3</sup> State regulators followed suit, using access charges to compensate LECs for a portion of the costs associated with operating local exchange and exchange access networks that were assigned to the intrastate jurisdiction. Access charges thus are one of the mechanisms created by regulators to permit local exchange carriers to recover the costs of their local network that are assigned the interstate and intrastate jurisdictions respectively, as required by Supreme Court precedent.<sup>4</sup>

Initially, access charges were predominantly usage-sensitive (as long distance charges had been), based on the Commission's judgment that those who used the network the most

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<sup>2</sup> *IP-Enabled Services*, 19 FCC Rcd 4863, ¶ 61 (2004) ("*IP-Enabled Services NPRM*").

<sup>3</sup> *Access Charge Reform*, 12 FCC Rcd 15982, ¶ 21 (1997) ("*Access Charge Reform Order*").

<sup>4</sup> See *Smith v. Illinois Bell Tel. Co.*, 282 U.S. 133, 149, 160 (1930).

should pay a larger portion of the costs, and reflecting a policy determination that costs should be recovered in a way that kept fixed end user charges affordable. Over time, a portion of those charges gradually have been converted into fixed end-user charges, while another portion continues to be recovered on a usage sensitive basis.<sup>5</sup> Access charges thus have been a key mechanism to recover part of the cost of a ubiquitous local phone network. And Chairman Martin has recognized the importance of ensuring “that the cost of the PSTN [is borne] equitably among those that use it in similar ways.”<sup>6</sup>

2. The Enhanced Services Provider Exemption. When the Commission originally established the access charge regime, those charges applied to all interstate communications services that used the local network, including both “basic” and “enhanced” services.<sup>7</sup> The Commission, however, subsequently created an “exemption” for enhanced services from the access charges that would otherwise apply. While it has emphasized that enhanced services are “users of access” and that “the link that LECs provide to connect subscribers with ESPs is an interstate access service,” it nonetheless “exempted” ESPs from paying per minute access charges, and allowed them “*the option* of purchasing interstate access services on a flat-rated basis from intrastate local business tariffs, rather than from interstate access tariffs used by IXCs.”<sup>8</sup>

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<sup>5</sup> *Access Charge Reform Order*, ¶¶ 21-22. Until a few years ago, a portion of loop costs was recovered through the usage-sensitive carrier common line charge. The *Access Charge Reform Order* phased out that rate structure. See *id.* at ¶¶ 37-40.

<sup>6</sup> *IP-Enabled Services NPRM*, Separate Statement of [then] Commissioner Kevin J. Martin.

<sup>7</sup> *Access Charge Reform Order*, ¶ 345.

<sup>8</sup> *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151, ¶ 27 (2001) (emphasis in original), *remanded*, *WorldCom v. FCC*, 288 F.3d 429 (D.C. Cir. 2002), *cert. denied*, 538 U.S. 1012 (2003).

Since it first adopted the ESP exemption, the Commission has further clarified the services that fall within its scope. For example, the Commission has squarely held that services that involve a so-called “net protocol conversion” do not fall within the scope of the exemption when that conversion is “necessitated by the introduction” of new technology on a “piecemeal” basis in order to maintain compatibility with the existing network and equipment.<sup>9</sup> The Commission also has made clear that the use of new packet switching transmission protocols, of which Internet protocol is one type, likewise does not bring services within the scope of the exemption, despite the fact that a net protocol conversion is necessarily involved whenever a customer of a packet-switched service exchanges traffic with a customer of a circuit-switched service.<sup>10</sup> And it also has made clear that if a service that uses the local telephone network is not subject to the ESP exemption, access charges apply.<sup>11</sup>

3. The “Certified Traffic” Described by Grande Is Not an Enhanced Service. At bottom, Grande’s petition is premised on Grande’s claim that the traffic it calls “certified traffic” – traffic that originates in IP format and terminates on the PSTN – is an enhanced service. This is so, according to Grande, because the traffic “undergoes a net protocol conversion” – it originates in IP format and terminates in TDM on the PSTN.<sup>12</sup> But as Verizon has explained a

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<sup>9</sup> *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, 12 FCC Rcd 2297, ¶ 105 n.6 (1997) (citations omitted) (“*Non-Accounting Safeguards Order*”).

<sup>10</sup> *See Independent Data Communications Manufacturers Association, Inc., Petition for Declaratory Ruling that AT&T’s InterSpan Frame Relay Service Is a Basic Service*, 10 FCC Rcd 13717, ¶¶ 33-41 (1995) (“*AT&T Frame Relay Order*”).

<sup>11</sup> *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, 19 FCC Rcd 7457, ¶ 4 n.13 (2004) (“*AT&T IP-in-the-Middle Order*”).

<sup>12</sup> Grande cites the *AT&T IP-in-the-Middle Order*, ¶ 7 and the *Non-Accounting Safeguards Order*, ¶¶ 106-107, for the proposition that “certain services involving no net protocol conversion are information services.” Grande Petition at 7, n. 4. Grande is flat wrong.

number of times in similar contexts, this does not convert the interexchange traffic that Grande sends to ILECs into an enhanced service.

The Commission has squarely held that services that involve a so-called “net protocol conversion” do *not* fall within the scope of the ISP exemption when that conversion is “necessitated by the introduction” of new technology on a “piecemeal” basis in order to maintain compatibility with the existing network and equipment.<sup>13</sup> Indeed, the paradigm example of such basic protocol conversion service – “a carrier-provided end office analog to digital conversion that permits an analog terminal to be accommodated by a network that is evolving to digital status,”<sup>14</sup> is directly analogous to the IP-to-PSTN traffic here. Just as the network previously evolved from analog to digital, the network today is evolving from circuit-switched to IP technology, and carrier-provided protocol conversions are needed to permit IP terminals and equipment and TDM terminals and equipment to communicate with one another.

In the *AT&T IP-in-the-Middle Order*, ¶ 4 n.13, the Commission explained that there are “three categories of protocol processing services that would be treated as basic services.” Namely, “protocol processing: (1) involving communications between an end user and the network itself . . . (2) in connection with the introduction of a new basic network technology (which requires protocol conversion to maintain compatibility with existing CPE); and (3)

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In the *AT&T IP-in-the-Middle Order*, the Commission explained that its *Non-Accounting Safeguards Order* “found that services that involve no net protocol conversion are *telecommunications* services, rather than information services, under the 1996 Act definitions.” *AT&T IP-in-the-Middle Order*, ¶¶ 6-7 (emphasis supplied). The only service involving “no net protocol conversion” that the Commission concluded might be an information service was “computer-to-computer IP telephony,” *AT&T IP-in-the-Middle Order*, ¶ 7, which is clearly not the type of traffic involved in Grande’s petition.

<sup>13</sup> *Non-Accounting Safeguards Order*, ¶ 2 n.6 (citations omitted).

<sup>14</sup> *Amendment to Sections 64.702 of the Commission’s Rules and Regulations (Third Computer Inquiry)*, 2 FCC Rcd 3072, ¶ 70 (1987).

involving internetworking . . . . The first and third identified categories of processing services result in no net protocol conversion to the end user.” *Id.* (citations omitted). Plainly, then, the second category – the one relevant here – *does* involve a net protocol conversion but nonetheless is considered a basic telecommunications service, not an information service.<sup>15</sup>

The Commission also has made clear that the use of new packet switching transmission protocols, of which Internet protocol is one type, likewise does not bring services within the scope of the exemption, despite the fact that a net protocol conversion is necessarily involved whenever a customer of a packet-switched service exchanges traffic with a customer of a circuit-switched service.<sup>16</sup> And the Commission has made clear that if a service that uses the local telephone network is not subject to the ESP exemption, access charges apply. Accordingly, Grande’s service is subject to appropriate access charges.

4. Even if the “Certified Traffic” described by Grande were considered an information service, access charges would still apply. Even if the Commission were to conclude that Grande’s services are appropriately classified as “information services,” access charges would still apply. Providers of information services use exchange access services and are, therefore, obligated to pay access charges unless otherwise exempt. As explained above, over 20 years ago, the Commission recognized that ISPs were “[a]mong the variety of users of access service[s],” a group that included “facilities-based carriers, resellers (who use facilities provided by others), sharers, privately owned systems, enhanced service providers, and other private line

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<sup>15</sup> The third category – “internetworking,” which the Commission defines as “conversions taking place solely within the carrier’s network to facilitate provision of a basic network service,” *AT&T IP-in-the-Middle Order* ¶ 4 n.13, may also apply. Again, the Commission has made clear that such “protocol processing services . . . would be treated as *basic* services.” *Id.*

<sup>16</sup> See *AT&T Frame Relay Order*, ¶¶ 33-41.

and WATS customers, large and small.”<sup>17</sup> When it created the access-charge regime, the Commission’s “intent was to apply these carrier’s carrier charges to interexchange carriers, and to all resellers *and enhanced service providers . . .*”<sup>18</sup>

Having made access charges applicable to ISPs, however, the Commission then adopted a narrow exemption. The Commission concluded that where “ISPs use incumbent LEC networks to receive calls from their customers,”<sup>19</sup> they should not be required to pay access charges. In these circumstances, the ISP has purchased business lines in order to communicate with its customers. “[T]he ISP’s use of the LEC facilities is analogous to the way another business subscriber uses a similarly-priced local business line to receive calls from customers who want to buy that subscriber’s wares that are stored in another state and require shipment back to the customer’s location.”<sup>20</sup>

But that is different from the way VoIP providers use the network. VoIP providers use the network to provide a conduit between two end users who wish to speak to one another. The end users are not communicating with the VoIP provider and may not even be customers of the VoIP provider; indeed the VoIP provider is transparent to the end users who are engaged in real-time voice communication. In these circumstances, the VoIP provider “use[s] the public switched network in a manner analogous to IXC.”<sup>21</sup> As a result, the central justification for the ISP exemption, and for the Commission’s decision to treat ISPs differently from IXCs, is not

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<sup>17</sup> *MTS and WATS Market Structure*, 97 F.C.C.2d 682, ¶ 78 (1983).

<sup>18</sup> *Id.* ¶ 76 (emphasis added).

<sup>19</sup> *Access Charge Reform Order* ¶ 343 (emphasis added).

<sup>20</sup> Brief for the FCC at 75-76, *Southwestern Bell Tel. Co. v. FCC*, Docket No. 97-2618 (8th Cir. Dec. 16, 1997) (“FCC Brief”) (emphasis added).

<sup>21</sup> FCC Brief at 75-76; *Access Charge Reform Order* ¶ 345.

applicable.<sup>22</sup> Grande *does* use the PSTN “in a manner analogous to IXCs” – to provide a transmission path between two people who wish to speak to one another. Grande’s service, therefore, does not fit within the stated rationale for the ESP exemption. Under such circumstances, the ISP exemption does not apply, and Grande is subject to the same access charges applicable to any carrier that uses the PSTN in similar ways.

Grande claims, however, that “under current Commission policies and practice, ‘IP telephony [is] generally exempt from access charges.’” Grande Petition at 15, *citing Developing a Unified Inter-carrier Compensation Regime*, 16 FCC Rcd 9610, ¶ 6 (2001) (“*Inter-carrier Compensation NPRM*”). It bases its claim – indeed, the entire premise for its petition – on this single sentence. But when the Commission wrote that sentence, it was clearly referring to services that qualify for the ISP exemption.<sup>23</sup> As explained above, Grande does not qualify for the ISP exemption.

The “IP telephony” to which the Commission was referring in its *NPRM* was could not be meant to include the kind of voice telephone traffic over the PSTN that Grande is providing because Grande’s traffic *is* subject to access charges under existing rules. The Commission was acutely aware in the *Inter-carrier Compensation NPRM* that “any discrepancy in regulatory treatment between similar types of traffic or similar categories of parties is likely to create opportunities for regulatory arbitrage.”<sup>24</sup> Nothing in the *Inter-carrier Compensation NPRM*

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<sup>22</sup> In other words, the ESP exemption is limited to an ISP’s use of the PSTN to reach its own subscriber for the provision of an enhanced service. It does not apply when an ESP (or the CLEC serving the ESP) uses the PSTN to reach a non-subscriber who receives a voice long distance call from another end user – as happens in a VoIP-to-PSTN call.

<sup>23</sup> *Inter-carrier Compensation NPRM* ¶ 133.

<sup>24</sup> *Id.* ¶ 12.

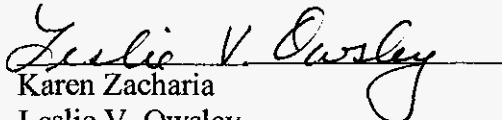


suggests that voice telephone calls that either originate or terminate on the PSTN are exempt from access charges.

For the foregoing reasons, the Commission should deny Grande's petition.

Respectfully submitted,

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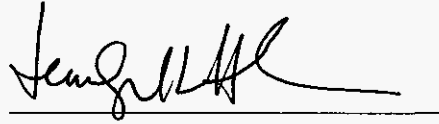
THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States  
GTE Southwest Incorporated d/b/a Verizon Southwest  
Verizon California Inc.  
Verizon Delaware Inc.  
Verizon Florida Inc.  
Verizon Maryland Inc.  
Verizon New England Inc.  
Verizon New Jersey Inc.  
Verizon New York Inc.  
Verizon North Inc.  
Verizon Northwest Inc.  
Verizon Pennsylvania Inc.  
Verizon South Inc.  
Verizon Virginia Inc.  
Verizon Washington, DC Inc.  
Verizon West Coast Inc.  
Verizon West Virginia Inc.

CERTIFICATE OF SERVICE

I hereby certify that, on this 12th day of December, 2005, copies of the foregoing  
"Comments of Verizon" were sent by facsimile and first class mail, postage prepaid, to  
the parties listed below.

A handwritten signature in black ink, appearing to read "Jennifer L. Hoh", written over a horizontal line.

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